

1 Bingham McCutchen LLP
2 WILLIAM F. ABRAMS (SBN 88805)
3 *william.abrams@bingham.com*
4 PATRICK T. WESTON (SBN 211448)
5 *patrick.weston@bingham.com*
6 SAMANTHA REARDON (SBN 240068)
7 *samantha.reardon@bingham.com*
8 1900 University Avenue
9 East Palo Alto, CA 94303-2223
10 Telephone: 650.849.4400
11 Facsimile: 650.849.4800
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13 Attorneys for Plaintiff
14 ALERE MEDICAL, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

11

12 ALERE MEDICAL, INC., a California Corporation,

No. C-07-05054 MEJ

13 Plaintiff,
14 v.

**NOTICE OF PENDENCY OF
OTHER ACTION OR PROCEEDING
(CIVIL L.R. 3-13)**

15 HEALTH HERO NETWORK, INC., a California Corporation,

Defendant.

18 Although Plaintiff Alere Medical, Inc. (“Alere”) believes that Civil L.R. 3-13
19 does not apply, it brings to the Court’s attention a matter between the same parties in the
20 Northern District of Illinois. Defendant Health Hero Network, Inc. (“Health Hero”) filed a
21 patent infringement action against Alere in the United States District Court for the Northern
22 District of Illinois, Eastern Division, on September 6, 2007 (Civil Action No. 07CV5031) (the
23 “Illinois action”), alleging infringement of claim 21 of U.S. Patent No. 7,223,236. Alere denies
24 infringement and is seeking a declaration that Patent No. 7,223,235 is invalid and not infringed.
25 The matter is assigned to Judge St. Eve and Magistrate Judge Nolan.

26 Alere does not believe that the Illinois action is related to this action because it
27 involves different subject matter. This action involves seven separate and unrelated patents that
28 are not at issue in the Illinois action. Alere does not believe that a transfer for coordinated or

1 consolidate pretrial proceedings under 28 U.S.C. section 1407 is appropriate because these
2 actions do not involve common questions of fact. Therefore, it is unlikely that there will be an
3 unduly burdensome duplication of labor and expense or conflicting results if the cases are
4 conducted before different judges.

5 Further, Alere does not believe that other coordination would avoid conflicts,
6 conserve resources or promote an efficient determination of the action. Alere and Health Hero
7 are both California corporations, and Health Hero's principal place of business is in Santa Clara
8 County. Upon information and belief, neither party has a principal place of business nor
9 significant operations in Illinois. The actions involve separate and unrelated patents.

10 DATED: October 1, 2007
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12 Respectfully submitted,

13 Bingham McCutchen LLP

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15 By: _____ /s/
16 William F. Abrams
17 Attorneys for Plaintiff
18 ALERE MEDICAL, INC.
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